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UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CIV. NO. 07-00324 DAE/BMK
) CR. NO. 04-00242 DAE
Plaintiff-Respondent,)
) MOTION TO DISMISS DEFENDANT'S
vs.) MOTION TO VACATE, SET ASIDE,
) OR CORRECT SENTENCE BY A
JOSE GUADALUPE PALAFOX-BARAJAS,) PERSON IN FEDERAL CUSTODY
) (28 U.S.C. § 2255) FOR
Defendant-Petitioner.) UNTIMELINESS; MEMORANDUM OF
) LAW; EXHIBIT "A"; CERTIFICATE
) OF SERVICE

MOTION TO DISMISS DEFENDANT'S MOTION TO VACATE,
SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN
FEDERAL CUSTODY (28 U.S.C. § 2255) FOR UNTIMELINESS

The United States of America, by its undersigned
counsel, hereby moves this Court to dismiss the Defendant's
"Motion To Vacate, Set Aside, Or Correct Sentence By A Person In
Federal Custody (28 U.S.C. § 2255)" because it was filed two

months after the statutory deadline for such motions making the Defendant's motion untimely.¹

This motion is based upon the attached Memorandum of Law and the record and files in this case and the underlying proceedings.

DATED: June 18, 2007 at Honolulu, Hawaii.

Respectfully submitted,

EDWARD H. KUBO, JR.
United States Attorney
District of Hawaii

By /s/ Tracy A. Hino
TRACY A. HINO
Assistant U.S. Attorney

¹ The Government notes that the criminal number on the Defendant's 2255 motion is incorrect and references the Defendant's conviction for Reentry After Deportation (Cr. No. 04-00072 DAE). This conviction is currently pending the Defendant's petition for certiorari to the Supreme Court. The Defendant's 2255 motion raises alleged errors in his supervised release revocation which is a completely different conviction (Cr. No. 04-00242 DAE).